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only a preference had been granted as to intestate property.⁹⁴ The act now provides that no veteran's award, regardless of size, shall be subjected to costs taxed or charged by public officers.⁹⁵ Probate courts may now determine claims of title by adverse parties, but the latter may have a jury trial if they so desire.⁹⁶ It is also now permissible to carry life insurance on a ward or on some person in whose life the ward has an insurable interest, the cost of such insurance being charged to the ward's estate as a form of investment.⁹⁷

VII. PUBLIC LAW

ADMINISTRATIVE LAW

A question may arise, when an administrative tribunal makes a finding of fact of the type frequently required of it by statute, as to whether or not such finding should follow the exact wording of the statute so as to provide clear support for the accompanying order. That question was answered, in *Missouri Pacific Railway Company v. Illinois Commerce Commission*,¹ where the commission, acting under the Public Utilities Act, sought to require the carrier to maintain rear-end flag protection for two of its passenger trains. The specific provision of the statute authorized the commission to require the performance, by any railroad, of "any other act which the health or safety of its employes, customers, or the public may demand."² The commission found, in substance, that public safety required the rear-end flag protection but nowhere, in its findings, did it make specific reference to the public "demand" for such protection. The carrier argued that the findings of the commission were defective for failure to correspond with statutory requirements, but the court held that it was not necessary to utilize statutory terminology so long as other synonymous terms were used.

⁹⁴ Laws 1949, p. 9, S. B. 112; Ill. Rev. Stat. 1949, Vol. 1, Ch. 3, § 232.

⁹⁵ Laws 1949, p. 5, S. B. 79; Ill. Rev. Stat. 1949, Vol. 1, Ch. 3, §§ 270a and 298a.

⁹⁶ Laws 1949, p. 4, S. B. 113; Ill. Rev. Stat. 1949, Vol. 1, Ch. 3, § 339a.

⁹⁷ Laws 1949, p. 6, S. B. 260; Ill. Rev. Stat. 1949, Vol. 1, Ch. 3, § 413.

¹ 401 Ill. 241, 81 N. E. (2d) 871 (1948).

² Ill. Rev. Stat. 1949, Vol. 2, Ch. 111½, § 61.

Some confusion about the procedure to be followed by one seeking judicial review under the new Illinois Administrative Review Act³ has been generated by the Illinois Supreme Court, through the medium of its decision in *Krachock v. Department of Revenue*,⁴ although upon a point which was not necessary to the final determination of that case. The plaintiff had held a distributor's license under the Motor Fuel Tax Act⁵ but, being notified by the department that he was indebted to the state for money due under the statute, he voluntarily surrendered his license. No further action was taken against him to recover the money claimed to be due. Four years later, plaintiff applied for a similar license only to have his application rejected on the statutory ground that he was indebted to the state.⁶ A complaint filed under the Administrative Review Act projected a major legal question over the absence in the administrative record of that portion thereof which dealt with the determination of plaintiff's indebtedness to the state. As the whole controversy hinged thereon, it was impossible for the court to review the action of the administrative tribunal.⁷ To that point, the decision was in full harmony with the statute.

In the final paragraph of the opinion, however, the court took exception to the fact that the plaintiff, in bringing the action, had made the Department of Revenue a defendant. It was said that this was tantamount to bringing a suit against the state, a step prohibited by the state constitution.⁸ If such is the case, then an unfortunate state of affairs has been created. The very purpose of action under the Administrative Review Act is to bring before the reviewing court the record of the administrative proceedings. As that record is to be found in the custody

³ *Ibid.*, Ch. 110, § 265 et seq.

⁴ 403 Ill. 148, 85 N. E. (2d) 682 (1949).

⁵ Ill. Rev. Stat. 1949, Vol. 2, Ch. 120, § 417 et seq.

⁶ *Ibid.*, Ch. 120, § 419.

⁷ It should be remembered that judicial review is limited to the record and no new evidence may be submitted: Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 274. It is impossible to determine from the opinion why the important portion of the record was not before the court. The fault would seem to rest on the plaintiff for it is up to him to specify, in his complaint, the record or portion thereof he wishes to be submitted to judicial review: Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 272(a).

⁸ Ill. Const. 1870, Art. IV, § 26.

of the department making the initial determination, it has been the custom in the past, when utilizing the writ of certiorari, to designate the particular department as defendant.⁹ It is difficult to understand why the same practice is not to be tolerated in cases coming under the Administrative Review Act, particularly as the court furnishes no inkling as to who should be named as defendant in the action. Since the only purpose of such a proceeding is to open the administrative record to judicial review, the typical elements of a suit against the state, in which potential state liability may be involved, are clearly lacking.

Review under the statute just mentioned is available only in those cases where the provisions of that statute are assimilated in the act creating or conferring power on the administrative agency.¹⁰ The legislature has, from time to time, amended many of the agency statutes so as to permit use of the simpler modern form of judicial investigation into administrative rulings. That trend was accelerated, during the recent General Assembly, when some forty-four assimilative provisions were added to existing agency statutes.¹¹ Not a few of these authorize direct appeal from trial court to the state supreme court, thereby circumventing the normal procedure of appealing first to the appropriate appellate court.¹²

CONFLICT OF LAWS

The nature of the treatment to be accorded by Illinois courts to foreign divorce decrees has been made the subject of comment elsewhere in this survey¹³ and further discussion thereof would be superfluous. Only one other case involving aspects of conflict of laws, therefore, remains to be noticed. It appeared from the facts in *First National Bank of Nevada v. Swegler*¹⁴

⁹ No objection of the kind here noted was voiced in *Snite v. Department of Revenue*, 398 Ill. 41, 74 N. E. (2d) 877 (1947).

¹⁰ Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 265.

¹¹ Most of the amendments originated in the lower house, but the list is too long to reproduce at this point. The amendments range from the licensing of architects, under Ill. Rev. Stat. 1949, Vol. 1, Ch. 10½, § 13f, to zoning matters, under Ill. Rev. Stat. 1949, Vol. 1, Ch. 34, § 152k.

¹² Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 278.

¹³ See section on Family Law, ante.

¹⁴ 336 Ill. App. 107, 82 N. E. (2d) 920 (1948). Leave to appeal denied.

that a chattel mortgage on an automobile had been duly executed according to the laws of Nevada and a certificate of registration had been issued there indicating that the mortgagee was the registered owner of the car. Contrary to a provision in the mortgage forbidding removal of the property from the state without written consent, the mortgagor took the automobile into Wyoming and there, through fraud, obtained a certificate of title from that state. The second certificate, of course, failed to disclose the presence of any lien on the vehicle. The mortgagor, armed with the Wyoming certificate, then brought the car to Illinois and sold it to an Illinois dealer who, in turn, transferred the same to the defendant, a bona-fide purchaser. In an action brought in Illinois by the mortgagee to enforce the chattel mortgage, the trial court decided for the defendant, but the Appellate Court, following an earlier decision,¹⁵ reversed on the ground that a mortgage, executed in another state in accordance with the laws thereof, is to be given the same force and effect in Illinois as it possesses at the place of execution. The common notion that an automobile certificate of title is a credible document, in reliance upon which legal rights may be erected, has again been demonstrated to be as unsound as are most other commonly accepted notions.

CONSTITUTIONAL LAW

Issues of constitutional law not already noted¹⁶ became the subject of consideration in several cases. Thus the right of the Illinois Progressive Party to secure a place on the ballot for its candidates was involved in *McDougall v. Green*.¹⁷ The election statute in controversy therein required that a petition to form a new political party and to obtain a place on the state ballot for its nominees had to be signed by a substantial number of

¹⁵ *National Bond & Investment Co. v. Larsh*, 262 Ill. App. 363 (1931).

¹⁶ See section on Criminal Law and Procedure, ante, for comment on the holding of the United States Supreme Court in *Terminiello v. City of Chicago*, 337 U. S. 1, 69 S. Ct. 894, 93 L. Ed. 1131 (1949).

¹⁷ 335 U. S. 281, 69 S. Ct. 1, 93 L. Ed. 3 (1948). Justice Rutledge wrote a separate concurring opinion. A dissenting opinion by Justice Douglas was concurred in by Justices Black and Murphy.

qualified voters but also required that, in the aggregate total, it was necessary to include the signatures of at least two hundred voters from each of at least fifty counties within the state.¹⁸ The Progressive Party's petition had been rejected on the ground that signatures had not been obtained in each of the required number of counties. An injunction had been sought to prevent the state officials from enforcing the statute on the basis that it was unconstitutional because, in the main, it was so discriminatory as to produce the disenfranchisement of a considerable number of the citizenry. It was claimed that, due to the peculiar distribution of the population among the one hundred and two counties of the state, it would be impossible for a party whose support was to be found in only a few counties, even though they were large in population, to obtain a place on the ballot.¹⁹ The federal district court refused to grant the injunction²⁰ and, upon appeal, the United States Supreme Court affirmed in a split decision.²¹ The position of the majority of that court is best summarized in the following quotation:

It would be strange indeed, and doctrinaire, for this court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a state the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.²²

State cases also forced examination into the constitutionality of certain of the legislative enactments. The validity of the 1943 amendment to the Cigarette Tax Act was brought into focus,

¹⁸ Ill. Rev. Stat. 1949, Vol. 1, Ch. 46, § 10—2.

¹⁹ The complaint alleged that 52% of the registered voters were residents of Cook County; that 87% were residents of the forty-nine most populous counties; and that only 13% resided in the fifty-three least populous counties of the state.

²⁰ 80 F. Supp. 725 (1948).

²¹ A concurring opinion by Justice Rutledge was predicated on the fact that the issue had, in a practical sense, become virtually moot as the date for the election was too close to the date of the decision to permit the making of proper arrangements. The dissenters believed the distribution of population in Illinois was such as to render the statutory provision discriminatory.

²² 335 U. S. 281 at 284, 69 S. Ct. 1, 93 L. Ed. 3 at 7.

for example, in two cases.²³ The plaintiffs there concerned had purchased cigarettes by mail order from Indiana dealers for their own use and not for the purpose of resale. When the state attempted to collect a cigarette tax, the plaintiffs sought injunctive relief on the basis that the statute, as amended, was invalid. The original statute had been described, by its title, as one designed to impose a tax upon persons "engaged in the business of selling cigarettes," so clearly was intended to apply to distributors, that term being used in its generally accepted commercial sense. By the 1943 amendment, the term "distributors" was defined to include any "person who in any one calendar year brings or causes to be brought into this state for consumption more than ten (10) cartons of original packages of cigarettes."²⁴ The Illinois Supreme Court, affirming a lower court decision granting an injunction, held that to make such acts alone the criterion of engaging in the business of distributing cigarettes was so obviously designed to include persons who could not be in such business as to render the classification obnoxious, in addition to which the scope of the amendment was not within the subject matter expressed by the title of the original statute.²⁵ Further evidence of unconstitutionality was found in the fact that the amendment imposed an improper tax upon interstate commerce. Clear interference with that commerce would be present if a state were to be permitted to impose a tax upon sales consummated elsewhere. Since the transactions concerned in the instant cases consisted of accepting orders sent from the jurisdiction attempting to tax, the unsoundness of the amendment was evident.

A provision of the Cities and Villages Act, one providing for judicial review of the decisions of a board of zoning appeals, was questioned in *Illinois Bell Telephone Company v. Fox*.²⁶ It appeared therein that the utility had been denied a building permit for the construction of a telephone exchange building. The

²³ *Babcock v. Elliott*, 403 Ill. 329, 86 N. E. (2d) 354 (1949); *Johnson v. Daley*, 403 Ill. 338, 86 N. E. (2d) 350 (1939).

²⁴ Laws 1943, p. 1063, S. B. 436; Ill. Rev. Stat. 1947, Ch. 120, § 453.1(3).

²⁵ Ill. Const. 1870, Art. IV, § 13.

²⁶ 402 Ill. 617, 85 N. E. (2d) 43 (1939).

board of zoning appeals had affirmed the building commissioner's decision but, on review in the circuit court, the decision of the board had been set aside. That judgment was affirmed on certiorari to the state supreme court. It was urged on the upper court that the applicable section of the statute allowing judicial review was unconstitutional, by reason of a violation of the doctrine concerning the separation of powers,²⁷ in that the statute permitted the court, if it found additional testimony was necessary for a proper disposition of the matter, to take such evidence and then to reverse or affirm the decision, in whole or in a part, or to modify the same.²⁸ It was argued that, by conferring upon the court the power to hear new evidence and to modify the board's decision, the statute purported to authorize the judicial tribunal to exercise a discretion which had been committed to the administrative body. The Supreme Court said it recognized the fact that the separation of powers doctrine would serve to prevent a court, when reviewing an administrative decision, from substituting its discretion for that of the administrative body. It held, however, that such was not the result produced by the statute in question for it considered that the court, when acting under the provision, would only pass on the legality of the administrative decision. The board would appear to have the better of the argument, though, for the power to hear new evidence plus the authority to modify the decision has been said to give a court an opportunity to exercise the discretionary function previously committed to the administrative board.²⁹

It was to be expected that the state supreme court would fall into line with the holding of the federal supreme court in the case of *Shelley v. Kraemer*,³⁰ a case concerning restrictive covenants, whenever the opportunity was presented. The chance came when the Illinois court passed on the appeal taken in *Tovey v. Levy*.³¹ Injunction had there been granted by the trial

²⁷ Ill. Const. 1870, Art. III.

²⁸ Ill. Rev. Stat. 1949, Vol. 1, Ch. 24, § 73—6.

²⁹ That, at least, was the basis for the decision in *Federal Radio Commission v. General Electric Co.*, 281 U. S. 464, 50 S. Ct. 389, 74 L. Ed. 969 (1930).

³⁰ 334 U. S. 1, 69 S. Ct. 836, 92 L. Ed. 1161 (1948).

³¹ 401 Ill. 393, 82 N. E. (2d) 441 (1948), noted in 27 CHICAGO-KENT LAW REVIEW 178 and 37 Ill. B. J. 312.

court, in accordance with previous cases on the point, to prevent the violation of a racially restrictive covenant which had been created by the mutual agreement of a number of Illinois property owners. The injunction was ordered set aside, on the authority of the holding in the federal case, not because the agreement was void for opposition to public policy but because enforcement by judicial means amounted to improper state action of the type condemned by the Fourteenth Amendment.

MUNICIPAL CORPORATIONS

Advocates of home rule, seeking a degree of independence for municipalities in order that they might meet purely local problems, will find little solace in the decision of the Supreme Court in *Higgins v. City of Galesburg*.³² In that case, an ordinance by which the city had sought to require producers of milk to obtain a license and submit to inspection was held invalid as an attempt to exercise extra-territorial powers which had not been conferred upon the city by the legislature. Statutory authority to impose such measures on dairy farms located within one-half mile of the city limits does exist,³³ but the ordinance in question attempted to prohibit the sale of milk produced more than ten miles from the city limits with corresponding licensing for producers with the ten-mile area. The plaintiff, a milk processor in Peoria, had been denied a license by the defendant, but won his case on the ground indicated, a holding in line with other Illinois decisions which have regularly denied to municipalities all powers except those plainly spelled out by the legislature.³⁴

Another license case, that of *Sager v. City of Silvis*,³⁵ serves to clarify the authority possessed by municipalities to license

³² 401 Ill. 87, 81 N. E. (2d) 520 (1948).

³³ Ill. Rev. Stat. 1949, Vol. 1, Ch. 24, § 8—1. See also, Ch. 24, §§ 23—63, 23—64, 23—81, and 23—105.

³⁴ The denial of the right to so regulate has been said to be against the great weight of authority in other states and is said to be opposed to the practical necessities of this field of regulation: 1948 Ann. Surv. Am. Law 256. See also comment in 44 Ill. L. Rev. 241.

³⁵ 402 Ill. 262, 83 N. E. (2d) 683 (1949).

the sale of liquor. The ordinance there concerned required the payment of a license fee of \$1000 per year. The petitioner sought to restrain its enforcement on the ground that the fee charged bore no reasonable relation to the cost of regulation. The statute which granted to municipalities the right to license was obviously designed to serve regulatory purposes,³⁶ but the court held that an incidental obtaining of revenue was not prohibited. The rule which generally requires that licensing fees be proportionate to the cost of regulation was held not to apply to activities of a type long recognized to be harmful and productive of disorder, such as the traffic in liquor, but was to be confined to the licensing of businesses of a more innocuous nature.

The argument that the fees charged bore no relation to the cost of regulation was also asserted in *MacNeil v. Chicago Park District*,³⁷ but again the contention failed, albeit for a different reason. The court there concerned first held that the power delegated to a park district to establish and maintain rules and regulations for the use of lagoons and harbors by the public necessarily carried with it the power to require payment of a reasonable fee for the use of the special facilities. It went on, however, and pointed out that, where the performance of official duty involved the exercise of judgment or discretion, the officer's determination as to his course of action was not subject to review or control. Despite this, the court did examine into the schedule of fees and found the charges to be of reasonable character.

Three cases concerned the validity of acts designed to establish municipal corporations. Through a long and cumbersome opinion in *People v. Deatherage*,³⁸ the Supreme Court disposed of a barrage of constitutional objections directed against the Community Unit School District Act.³⁹ It held there was no deprivation of the right of the people to a thorough and efficient sys-

³⁶ Ill. Rev. Stat. 1949, Vol. 1, Ch. 43, § 4—1.

³⁷ 401 Ill. 556, 82 N. E. (2d) 452 (1948).

³⁸ 401 Ill. 25, 81 N. E. (2d) 581 (1948).

³⁹ Ill. Rev. Stat. 1949, Vol. 2, Ch. 122, § 8—9 et seq.

tem of free schools,⁴⁰ nor did the "fractionating" of a former school district constitute a taking without due process.⁴¹ Voters residing in the territory of an existing district were said not to be deprived of their right to vote when they were taken into a new community unit school district.⁴² Claims of unlawful delegation of legislative power and of inadequate labeling were also rejected. The case should cause even those with stamina to think twice before attacking the constitutional basis of a school act.

Some sort of record for parties defendant was established in *McFarlane v. Hotz*⁴³ when twenty-four counties, twenty-seven cities and villages, three forest preserve districts, ten park districts, and miscellaneous other persons and municipal organizations were joined in a suit to test the validity of the Illinois Municipal Retirement Fund Act.⁴⁴ That act was upheld, however, despite the claim of violation of several sections of the state constitution. The Hospital Authorities Act,⁴⁵ on the other hand, questioned in *Grennan v. Sheldon*,⁴⁶ fell because the provision relating to the separate canvassing of votes in certain territories outside the corporate limits of the municipality was deemed to constitute an unreasonable classification. The unreasonableness was said to exist in the fact that one class of voters could defeat the establishment of the authority although it possessed no attributes or qualifications distinguishing it from others not favored with that power.

Two amendments to the City Civil Service Act,⁴⁷ adopted in 1947, were rejected by the court in *People ex rel. Duffy v. Hurley*⁴⁸ for invalid attempted delegation of legislative power.

⁴⁰ Ill. Const. 1870, Art. VIII, § 1.

⁴¹ *Ibid.*, Art. II, § 2.

⁴² *Ibid.*, Art. II, § 18.

⁴³ 401 Ill. 506, 82 N. E. (2d) 650 (1948).

⁴⁴ Ill. Rev. Stat. 1947, Ch. 24, § 1175 et seq.

⁴⁵ Ill. Rev. Stat. 1947, Ch. 23, § 163.1, et seq. A new statute was enacted in the current period: Laws 1949, p. 361, S. B. 409; Ill. Rev. Stat. 1949, Vol. 1, Ch. 23, § 163.30 et seq.

⁴⁶ 401 Ill. 351, 82 N. E. (2d) 162 (1948). See also *People v. Spaid*, 401 Ill. 534, 82 N. E. (2d) 435 (1948).

⁴⁷ Ill. Rev. Stat. 1947, Ch. 24½, § 49. These sections had been given identical numbering. A new section was enacted in 1949 to obviate the difficulty: Laws 1949, p. 580, S. B. 357; Ill. Rev. Stat. 1949, Vol. 1, Ch. 24½, § 49.

⁴⁸ 402 Ill. 562, 85 N. E. (2d) 26 (1949).

The amendments provided for the granting of certain credit in promotional examinations because of military service. It was not made clear therein whether the credit was to be added before or after the multiplication of the score by a weight factor. The inability of the municipal employee to determine his promotional rights with certainty was a primary factor in the outcome of the case.⁴⁹

A warning has been sounded to any city or village which may have neglected to set up a police pension fund through the medium of the holding in *Board of Trustees of Police Pension Fund of Glen Ellyn v. Village of Glen Ellyn*.⁵⁰ The village concerned was held liable to account for certain fees which it had collected since 1932 and which should have been used to set up the pension fund but which fees had been used for other municipal purposes. The duty to establish the fund was said to be a mandatory one, operating instantly and automatically as soon as the village population reached the required level,⁵¹ and, being a governmental function, the failure to observe the duty could not affect the village's liability for the theory of recovery was not predicated on tort but rather on an idea resembling that of constructive trust or unjust enrichment. Recovery of an amount for taxes which should have been, but were not, levied for the fund was denied on the ground that the failure to levy was simply an act of negligence for which the law created no liability.

Interesting, if not significant, cases dealt with questions of zoning. The opinion in *County of Du Page v. Henderson*,⁵² dealing with a zoning ordinance enacted pursuant to the County Zoning Act,⁵³ traces developments in county zoning from the grandfather of all zoning cases, that of *Euclid v. Ambler Realty Company*,⁵⁴ down to the present. In *Metropolitan Insurance Company v. City of Chicago*,⁵⁵ a zoning ordinance enacted in Chicago

⁴⁹ The enactment of a new statute on the subject is noted at 47, ante.

⁵⁰ 337 Ill. App. 183, 85 N. E. (2d) 473 (1949).

⁵¹ Ill. Rev. Stat. 1949, Vol. 1, Ch. 24, § 892 et seq.

⁵² 402 Ill. 179, 83 N. E. (2d) 720 (1949).

⁵³ Ill. Rev. Stat. 1949, Vol. 1, Ch. 34, § 152i et seq.

⁵⁴ 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

⁵⁵ 402 Ill. 581, 84 N. E. (2d) 825 (1949).

was held invalid, as it related to the plaintiff's property, because of its arbitrary and unreasonable character. The case gives some credence to the idea that one may, by reliance upon a zoning ordinance in effect when a purchase of property is made, gain the right to object to a subsequent amendment thereof if the amendment would deprive the owner of the contemplated use which had dictated the purchase, provided that use was permissible under the original zoning ordinance. Adoption of a zoning scheme by a municipality would seem to carry elements of estoppel in its train.

Two cases arose concerning tenure of teachers in public schools. One section of the statute provides that a full-time teacher, after a probationary period of two consecutive years of service, is to be awarded a contract unless notice of dismissal has been given sixty days prior to the end of the probationary period.⁵⁶ In *Betebenner v. Board of Education*,⁵⁷ the court said that all service performed subsequent to the effective date of the statute is deemed to be probationary, even though that term be not used in the contract, but that one who has taught for two years is entitled to a contractual continued service status whether his employment during that period was or was not on a trial basis. In *Haag v. Board of Education, District No. 158*,⁵⁸ however, the court held that the two-year period must consist of two consecutive calendar years, so that service for two full school terms will be insufficient to create the right to permanent tenure.

Some miscellaneous problems were handled in other cases. It became necessary, in *Smith v. Ballas*,⁵⁹ for example, for the court to construe the statute which forbids the sale of liquor within one hundred feet of a church, school or other specified public building.⁶⁰ Extended discussion over whether the one-hundred foot measurement should be taken from the public building

⁵⁶ Ill. Rev. Stat. 1949, Vol. 2, Ch. 122, § 24—2.

⁵⁷ 336 Ill. App. 448, 84 N. E. (2d) 569 (1949).

⁵⁸ 337 Ill. App. 201, 84 N. E. (2d) 833 (1949).

⁵⁹ 335 Ill. App. 418, 82 N. E. (2d) 181 (1948), noted in 27 CHICAGO-KENT LAW REVIEW 180.

⁶⁰ Ill. Rev. Stat. 1949, Vol. 1, Ch. 43, § 127.

or from the boundary of the premises would appear superfluous, yet the court managed to put three pages of such discussion into an opinion which held that distance from the premises was the thing intended. Even at that the decision is laudable for its relative brevity in the face of the opinion in *Woodward Governor Company v. City of Loves Park*⁶¹ wherein thirteen pages were needed to establish that the holder of a railroad easement is an "owner" entitled to petition for disconnection from a municipality,⁶² as one need not be the holder of a fee simple estate in order to qualify as such. In direct contrast, an appellate court sitting in another district, in one paragraph, disposed of the contention that a city was to be deemed an "owner" under the same section.⁶³ Although the city held an easement for highway purposes over the property to be disconnected, it was said that the city was a "taxeater" rather than a "taxpayer" so its easement right in the property was insufficient to permit defeat of the purposes for which the statute was enacted. The obligation to pay taxes was, to that court, of significance in arriving at a construction of the term "owner."

PUBLIC UTILITIES

The bulk of cases in the field of public utility law usually deal with petitioners who question orders entered by the Illinois Commerce Commission. Half a dozen such matters were considered by the Supreme Court during the past year but none set forth new law and only two seem worthy of even brief mention. Through the medium thereof, the court removed any lingering doubt that the commission could grant a rehearing of an order after the expiration of thirty days from the date of its entry. The two opinions declare that such action is clearly improper.⁶⁴ Even the

⁶¹ 335 Ill. App. 528, 82 N. E. (2d) 387 (1948).

⁶² Ill. Rev. Stat. 1949, Vol. 1, Ch. 24, § 7—42.

⁶³ See *American Community Builders v. Chicago Heights*, 337 Ill. App. 263, 85 N. E. (2d) 837 (1949). Leave to appeal denied.

⁶⁴ *Illini Coach Co. v. Greyhound Lines*, 403 Ill. 21, 85 N. E. (2d) 39 (1949); *People ex rel. Ill. Highway Trans. Co. v. Biggs*, 402 Ill. 401, 84 N. E. (2d) 372 (1949).

legislature left the law unchanged except for the passage of an act designed to establish an annuity and pension plan for employees of municipally-owned public utilities.⁶⁵ The plan proposed thereby should now leave no uncovered public employees in the state.⁶⁶

VIII. TORTS

Novelty in the field of tort law has been provided by both cases and statutes.¹ In *Mower v. Williams*,² for example, the liability of a highway maintenance man for negligence was considered. The defendant was charged with driving a snow plow into an intersection and in the path of plaintiff's vehicle. The plaintiff was denied recovery when the court described the defendant's duty to maintain the highway as one requiring the exercise of discretion and judgment, calling it a "governmental" one as distinguished from a ministerial duty. While "governmental" may not be the proper term to use when speaking of the duty of an individual, since it produces confusion with the immunity granted to municipal organizations engaged in that type of function, it is clear that the court has established a precedent whereby those charged with the maintenance of highways may escape liability for negligence because of the "judgment" required of them. One might well inquire if any act can be more "ministerial" than that of driving a truck on a highway, even though a snow plow be attached. The reason underlying a grant of immunity, to-wit: the necessity for freedom of action, can scarcely be cited as sufficient to allow a highway employee to ignore the obligation to use due care while driving on the highway. The case of *Lythell v.*

⁶⁵ Laws 1949, p. 1222, H. B. 691; Ill. Rev. Stat. 1949, Vol. 2, Ch. 111½, § 153 et seq.

⁶⁶ In *Chicago, B. & Q. R. Co. v. Illinois Commerce Commission*, 82 F. Supp. 368 (1949), the federal district court enjoined the state commission from attempting to require the restoration of train service in the field of interstate commerce.

¹ The case of *Gorczynski v. Nugent*, 402 Ill. 147, 83 N. E. (2d) 495 (1949), affirming 335 Ill. App. 63, 80 N. E. (2d) 418 (1948), dealing with the liability of a race-track for injury to a minor stable boy, has been discussed above under the heading of Labor Law. The case of *Moore v. Moyle*, 335 Ill. App. 342, 82 N. E. (2d) 61 (1948), is commented upon in the section dealing with Corporations, ante.

² 402 Ill. 486, 84 N. E. (2d) 435 (1949), reversing 334 Ill. App. 16, 78 N. E. (2d) 529 (1948). Crampton, J., dissented.